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SUMMARY RECORD OF THE 1046th MEETING

Held at Headquarters, New York,
on Monday, 1 April 1991, at 3 p.m.

Chairman: Mr. POCAR

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The meeting was called to order at 3.05 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (continued)

Third periodic report of the United Kingdom of Great Britain and Northern Ireland (continued) (CCPR/C/58/Add.6, Add.11 and Add.12)

1. At the invitation of the Chairman, Mr. Beamish, Mr. Dykes, Mr. Halliday and Mr. Stock (United Kingdom) took places at the Committee table.

Constitutional and legal framework within which the Covenant is implemented (article 2 (2) and (3) of the Covenant) (section I of the list of issues)

2. The CHAIRMAN said that the United Kingdom delegation would answer questions held over from section I of the list of issues.

3. Mr. WENNERGREN said that it was important to clarify the United Kingdom position on self-determination for Hong Kong, a right provided for under article 1 of the International Covenant on Civil and Political Rights, article 21 of the Universal Declaration of Human Rights, and Article 1 of the Charter of the United Nations. The United Kingdom, on acceding to the Covenant, had entered reservations in respect of article 1, and, with regard to Hong Kong, in respect of article 25. In that connection he wished to know whether any initiatives had been taken in Hong Kong to develop democracy, since there had been no referendum concerning the future of the 6 million people of Hong Kong after 1997, and it appeared that no encouragement whatsoever had been given to the people of Hong Kong to aspire to the enjoyment of their human rights.

4. Although the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China would not be put into effect until July 1997, it clearly impacted on the present. The Basic Law stated that the ultimate aim was to elect the future Legislative Council by universal suffrage, although the annexes to the Law suggested that only a percentage of the members would be elected through direct elections. It was difficult to see how that approach was compatible with the Universal Declaration of Human Rights, the Covenant, or the Charter of the United Nations. The comment by the United Kingdom delegation that the political situation in Hong Kong was unique hardly seemed to constitute an adequate explanation.

5. Further, it was stated that the Special Administrative Region would enjoy a high degree of autonomy, but no explanation had been given of what that actually meant. It appeared that the right to interpret the Basic Law would lie with the Standing Committee of the National People's Congress rather than with the Hong Kong courts. It would be interesting to know whether the underlying legal philosophy originated in the United Kingdom or in the People's Republic of China. The answers to those questions would determine how independent the Hong Kong courts would actually be. While the Basic Law provided for many fundamental rights, it was not really clear who would interpret those rights and what the situation would actually be in future.

6. Mr. DIMITRIJEVIC said that he wondered to what extent the average citizen was aware of the United Kingdom's responsibilities under the Covenant and whether information relating to it was generally available.

7. He endorsed the concerns expressed by previous speakers regarding the question of Hong Kong; the question had a human rights dimension that overshadowed other questions in the context of the United Kingdom's compliance with the Covenant. In that connection the primary concern of the Committee was whether the scope of application of the Covenant would be diminished after 1997. Specifically, it was not clear what was meant by the statements in the Basic Law and the Sino-British Joint Declaration on the Question of Hong Kong that the Covenant would remain in effect as it applied to the territory. Everything should be done to implement the Covenant prior to 1997, so that there would be no basis for claiming, after that date, that the application of the Covenant in Hong Kong differed from its application everywhere else. It was essential for the United Kingdom to withdraw its reservation in respect of article 25, particularly since the United Kingdom had stated its intent to introduce representative government gradually until 1997.

8. A further concern of the Committee related to whether the commitment on the part of the People's Republic of China to maintain the application of the Covenant to Hong Kong after 1997 might prove simply to be an empty promise. The situation was delicate. However, he noted that the Joint Declaration provided for an entity termed "Hong Kong, China" to conclude agreements with international organizations, which might be an avenue to explore in terms of implementation of the Covenant. It certainly appeared that article 39 of the Basic Law, which stated that the provisions of the Covenant should remain in force in Hong Kong, meant, in particular, that article 40, concerning the reporting obligation, would remain in effect.

9. There appeared to be a contradiction between article 158 of the Basic Law, which stated that the power of interpretation of the law should be vested in the Standing Committee of the National People's Congress, and paragraph 3 (3) of the Joint Declaration, which stated that the power of final adjudication would be vested in the Hong Kong Special Administrative Region. It seemed that in reality the final say would lie with the National People's Congress of China, which would be entitled to interpret the law in a rigid, authoritative manner that would be binding on the courts. If that were the case the courts would lose the power of final adjudication provided for under the Joint Declaration. A thorough study of the relationship between the Basic Law, the Joint Declaration and the Covenant was needed.

10. Mr. PRADO VALLEJO said that while there was no human rights paradise anywhere in the world, in the context of States such as the United Kingdom the Committee was, perhaps, inclined to the view that all human rights should be guaranteed. Nevertheless, there were evidently some problems with regard to the United Kingdom's report, and he endorsed the concerns expressed by other members of the Committee.

(Mr. Prado Vallejo)

11. The numerous reservations entered by the United Kingdom distorted implementation of the Covenant, with the result that some of the rights provided thereunder remained in limbo. It was his hope that the United Kingdom would soon withdraw those reservations. Further, the Government of the United Kingdom had not so far ratified the Optional Protocol. The fact that the United Kingdom was a party to the European Convention on Human Rights did not preclude ratification of the Protocol. It was difficult to understand why the United Kingdom seemed to consider its international obligations to have been met by acceding solely to the Covenant, particularly when some opposition had been expressed in the Parliament to incorporation of the provisions of the European Convention into British domestic legislation.

12. The Committee's concern over the situation in Hong Kong was evident. Given that the People's Republic of China was not a party to the Covenant, ways must be found of guaranteeing human rights after the transfer of power in 1997. It would help if the United Kingdom withdrew its reservations in respect of Hong Kong.

13. Turning to the question of terrorism, he noted that anti-terrorist legislation in the United Kingdom gave excessive powers to the police, which impeded full implementation of the Covenant. Equally, detainees suffered abuses under the immigration legislation, as had been apparent during the recent conflict in the Persian Gulf. In a broader sense, war constituted the primary threat to the right to life guaranteed under article 6 of the Covenant, and States had a fundamental obligation to avoid warfare. The United Kingdom was the first country which had participated in the Gulf War to come before the Committee, given which he wished to bring to its attention the great suffering caused by the conflict. While the international community had taken action against the abuses of the Iraqi regime, the fact remained that there had been excessive application of force, resulting in thousands of deaths. There was now a need for urgent humanitarian assistance to protect the right to life. The United Kingdom, as a country which, throughout its history, had stood in the vanguard of those protecting freedom and human rights, should ponder those considerations.

14. Mr. WAKO, referring to section I (a), said that the United Kingdom's reservation concerning article 1 of the Covenant was drafted in such a way that its obligations under the Charter of the United Nations would prevail over its obligations under the Covenant. He would appreciate hearing the delegation's views on how the United Kingdom's obligations towards Hong Kong would be affected by its reservation concerning article 1.

15. Under Article 73 of the Charter, Governments such as that of the United Kingdom had an obligation to assist the peoples of Non-Self-Governing Territories in the progressive development of their free political institutions, and in his view, that also applied to Hong Kong. In other former colonial Territories, the colonizing Power, before granting independence, had ensured the holding of free elections on the basis of universal suffrage, leading to the establishment of a democratically elected Government. Furthermore, a Bill of Rights had been firmly entrenched in the constitutions of those countries.

(Mr. Wako)

16. With regard to Hong Kong, it appeared that, at the outset, there might have been an agreement that the legislature would be elected on the basis of universal suffrage. In addition, the Sino-British Joint Declaration contained a clear statement by China that the legislature of the Hong Kong Special Administrative Region would be constituted by means of elections.

17. Later, in 1985, the Foreign Secretary of the United Kingdom, Sir Geoffrey Howe, had stated that Hong Kong's political system would be progressively democratized so as to establish a representative Government, rooted in and acceptable to the local population, in the remaining years preceding the resumption of Chinese sovereignty. Accordingly, the initial understanding had been that by 1996, a legislature elected on the basis of universal suffrage would be in place in Hong Kong.

18. By 1990, the situation appeared to have changed, however. Article 68 of the Basic Law, while stating that the Legislative Council would be constituted by means of elections, appeared to anticipate a gradual and orderly process, suggesting that the election of all its members on the basis of universal suffrage would not be established by 1996, but some time thereafter. That raised the question of whether or not the people of Hong Kong were ready for universal suffrage. Hong Kong was far more developed, economically, socially and in other ways, than some African countries had been in the 1960s, and yet those countries, at the time of independence, had established universal suffrage. He therefore urged the United Kingdom to withdraw its reservation with regard to Hong Kong.

19. Referring to section I (c), he appealed to the United Kingdom to reconsider the issue of ratifying the Optional Protocol to the Covenant. In his view, the reasons advanced by the United Kingdom for non-ratification were insufficient. The fact that the United Kingdom was subject to the European Convention for the Protection of Human Rights and Fundamental Freedoms did not mean that the Optional Protocol was redundant, since many of the provisions of the two instruments, while similar in wording, were not on a par when it came to implementation. That was particularly true with regard to cases which came under article 14 of the Covenant. Furthermore, there were no provisions in the European Convention which paralleled those of articles 26 and 27 of the Covenant, and some of the difficult cases with which the Committee had recently been dealing had involved interpretations of precisely those articles. The ratification of the Optional Protocol by the United Kingdom would give its citizens further avenues through which to air their grievances in areas in which they felt that their rights had been violated. Furthermore, if the Optional Protocol were applicable to Hong Kong before 1996, it would be easier to argue that the system should remain in place thereafter when the Territory was ceded to Chinese sovereignty.

20. Turning to section I (d), he drew attention to the statement by the United Kingdom representative that the final form of the Hong Kong Bill of Rights might be different from the current one, a possibility which could have far-reaching implications for the rights embodied in the Covenant. Even as currently drafted, the instrument contained a number of provisions which appeared to be in conflict with those of the Covenant. Furthermore, questions arose as to the status of the

(Mr. Wako)

Hong Kong Bill of Rights, which was not part of the Constitution. Articles 3 and 4, although they were helpful in some degree, could be applied only to the extent that it was possible to do so, and he drew attention to document CCPR/C/58/Add.11, paragraph 13, in that regard. Accordingly, articles 3 and 4 were too weak to replace a provision whereby the Bill of Rights would be firmly entrenched in the Constitution.

21. In his view, article 39 of the Basic Law could be used in negotiations with China to ensure that the human rights reporting mechanisms which were currently in place would continue to exist after 1997. Since the article referred not only to the rights embodied in the Covenant but to the provisions themselves, articles 28 to 45 of the Covenant, which dealt with the reporting mechanisms, must also be included. Moreover, article 39 also referred to the international labour conventions as applied to Hong Kong. It was his understanding that Hong Kong would be permitted to continue to take part in the activities of the International Labour Organisation after 1997. In his view, continued adherence to the Covenant could be provided for in the same way, particularly if, as it appeared, the entity called "Hong Kong, China" would also be permitted to take part in the activities of the General Agreement on Tariffs and Trade and the World Meteorological Organization.

22. Other autonomous governments had been permitted by the central government to continue to accede to treaties of that nature. It was therefore not a question of whether precedents existed but simply whether thought had been given to Hong Kong's ratification of the Covenant, inasmuch as the Joint Declaration provided for a high degree of autonomy in respect of Hong Kong's executive, legislative and judicial functions.

23. One issue which required clarification was the manner in which the Joint Declaration vested final authority with regard to interpretation in the courts of the Hong Kong Special Administrative Region. If those provisions were to be enforced, then Hong Kong could ratify the Optional Protocol, and it would be possible for individual complaints to be made directly from Hong Kong to the Committee.

24. Mr. SERRANO CALDERA said that he was particularly interested in learning how the Covenant had been implemented and what its status was within the legal system of the United Kingdom. While the United Kingdom delegation had satisfactorily described the constitutional and legal framework within which the Covenant applied, concerns arose as to the degree of compatibility between the legal system and the provisions of the Covenant. Like any international legal instrument, the Covenant was intended to be universal and general in scope. A reading of the report made it clear that there were a large number of situations - ranging from multiple jurisdictions to emergency laws - which in themselves created a contradiction between the United Kingdom's legal structure and the implementation of the Covenant.

25. Within the hierarchy of law in the United Kingdom, the Covenant had the status of an ordinary law, and derogations from its provisions could take place through the enactment of other laws which had the same standing. Since the Covenant did

(Mr. Serrano Caldera)

not have the status of a constitution, the result could be that it would have no more force than a statement of good intentions which had little chance of being implemented thoroughly in practice. Taking into consideration the judicial system, the multiple jurisdictions and the problems arising from a number of dependent Territories, as well as the United Kingdom's non-ratification of the Optional Protocol, he could only wonder how effective the Covenant really was.

26. With regard to Hong Kong, he asked whether both the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights would be applied once the Basic Law had entered into force and whether the current status quo would continue, so that there would be no derogations from rights and privileges of Hong Kong's citizens unless so prescribed. Another issue of concern was the possibility, according to the Basic Law, that limits could be imposed on a number of the guarantees that the Basic Law itself might establish with regard to the protection of human rights in Hong Kong. In general terms, it would be interesting to know whether there were any guarantees that the Covenant would be implemented in the future; some special machinery should be established.

27. It would also be interesting to know whether there would be any minimum guarantees within the various jurisdictions of the United Kingdom with regard to the implementation of the Covenant. Reference had been made to certain special jurisdictions in which the presumption of innocence had disappeared. That was not only one of the fundamental guarantees embodied in the Covenant, but was a fundamental guarantee of any system in respect of due process. Information on how equality before the law was guaranteed would also be appreciated.

28. Mr. HERNDL recalled that it was the Committee's policy to ask States to review their reservations to the Covenant in the hope that they might decide to withdraw some of them, and he urged the United Kingdom Government to bear that possibility in mind.

29. Turning to the question of Hong Kong, he said that every effort should be made to ensure continuing compliance with the Covenant after 1997, in particular by taking measures which would bring Hong Kong legislation more closely into line with the Covenant and subsequently make it difficult for the authorities to deviate from its provisions. However, it was clear from the terms of both the Joint Declaration and the Basic Law that that would be no easy task since, for example, article 8 of the Basic Law stated that all laws in Hong Kong could be amended by the legislature of the Hong Kong Special Administrative Region. The Basic Law itself, of course, could also be amended by the authorities. He was confident that the United Kingdom Government shared the Committee's concern with regard to the survival of the Covenant in Hong Kong after 1997.

30. Mr. HALLIDAY (United Kingdom), replying to questions members had raised, said that the Government had given careful consideration to the issues involved in incorporating the Covenant in United Kingdom domestic law, and would review its policy in the light of the Committee's views. While incorporation of the Covenant

(Mr. Halliday, United Kingdom)

would not be incompatible with United Kingdom law, it would represent a major change in the country's constitutional arrangements and, taking such a step, the Government would have to be confident that there was a net advantage to be gained. The Covenant itself explicitly allowed States parties discretion as to how they would give effect to their obligations under the Covenant. He acknowledged, however, that the position of the United Kingdom and the dependent territories vis-à-vis those obligations lacked uniformity.

31. The importance of the United Kingdom's obligations under the European Convention on Human Rights should not be underestimated. Existing arrangements allowed the Government time to take considered action aimed at implementing the decisions of the European Court of Human Rights, and he pointed out that the United Kingdom's record in respect of adverse decisions of the Court was by no means bad, especially considering that five of the Court's decisions related to a single issue and that the United Kingdom had recognized the right of individual petition to the Court as far back as 1966.

32. Some members had drawn attention to special measures taken to combat terrorism. Unless the situation changed, such measures would, indeed, continue to be necessary, but it would be quite incorrect to claim that the principle of presumption of innocence no longer obtained in some parts of the United Kingdom.

33. It was difficult to draw comparisons with other countries, since the background and circumstances of each country differed. In the case of the United Kingdom the checks and balances within the judicial system had been built up over many centuries and should not be lightly discarded or amended. In particular, it should not be concluded from the report that statutory law in the United Kingdom could only limit rights and freedoms available under common law: in many instances it strengthened and affirmed such rights and freedoms, and in that context he could mention such legislation as the Police and Criminal Evidence Act, the Race Relations Act and the legislation on equal opportunities and equal pay.

34. Incorporation of the Covenant would be a highly complex exercise, and would involve an essentially political decision based on a close examination of the ways in which existing United Kingdom law, both common law and statute law, in fact fulfilled the country's obligations under the Covenant. Debate on the issue was continuing and it was unlikely that any decision would be taken in the immediate future.

35. In reply to Mr. Myullerson, who had asked whether the norms in the Covenant, as part of customary international law, were to be considered as already having some special status in United Kingdom law, he said that he was unaware of any ruling by the courts to that effect.

36. Replying to Mr. Fodor's question on differences in the law as it applied in various parts of the United Kingdom, he said that such differences reflected long-standing traditions to which people in the regions attached great importance;

(Mr. Halliday, United Kingdom)

that there was no need to move towards a completely unified system when the different approaches were equally compatible with the United Kingdom's international obligations.

37. As to the question of public awareness of the Covenant, he said that the text was widely available, and that the periodic reports were disseminated through the libraries of both Houses of Parliament and were sent to relevant non-governmental organizations. Mention should also be made of an internal Foreign Office document on human rights in foreign policy, which had been made available to Members of Parliament, universities and other interested parties.

38. In connection with his Government's reservations to the Covenant, he said that he would convey the views expressed in the Committee, but wished to point out that he could not accept the claim that the reservations had the effect of consigning human rights in the United Kingdom to a kind of limbo: if anything, the Government tended to err on the side of caution in its approach, going to great pains to elucidate any possible incompatibilities between the provisions of the Covenant and those of domestic legislation.

39. His delegation accepted the point that the obligations undertaken by the United Kingdom under the European Convention on Human Rights were not a conclusive argument for not ratifying the Optional Protocol, and that the Covenant differed from the European Convention in certain substantive respects. Successive governments had deemed it unnecessary to give the issue priority; however, the position regarding ratification was not inflexible.

40. Mr. BEAMISH (United Kingdom) pointed out that his Government's Declaration in connection with article 1 of the Covenant did not constitute a reservation: it had been made in 1968 when the Government signed the Covenant and had been maintained in 1976 when the Covenant was ratified. It did not purport to limit the right of self-determination, and merely stated his Government's understanding that, in the event of a conflict between its obligations under article 1 and its obligations under the Charter, the latter would prevail. The Declaration had been made at a time when the right of self-determination was less clearly defined than was now the case. It referred in part to Articles 1 and 2 of the Charter, and to article 73 which, inter alia, affirmed basic obligations in respect of Non-Self-Governing Territories, and the Declaration was thus a correct statement of the legal position, although opinions might differ as to the need to retain it.

41. Turning to the question of the exercise of the right of self-determination by the people of Hong Kong, he said that due account must be taken of the special circumstances of the Territory and of the fact that much of it was subject to a lease which would expire in 1997. While Hong Kong was currently one of the dependent Territories of the United Kingdom, its unique situation had long been recognized.

42. Negotiations on the future of Hong Kong had begun on a confidential basis in 1982, and the United Kingdom Government had made it clear from the outset that any

(Mr. Beamish, United Kingdom)

arrangement must be acceptable to the population. Following the signing of the Joint Declaration in 1984 an Assessment Office had been established to evaluate the views of the people of Hong Kong, who were found to be largely in favour of the text. The Chinese Government had appointed a Basic Law Drafting Committee consisting of 59 members, 23 of them from Hong Kong, and a Basic Law Consultative Committee (BLCC) consisting exclusively of Hong Kong representatives had also been set up to determine public opinion in the Territory with regard to the draft Basic Law. The people of Hong Kong had thus been extensively consulted on all aspects of their future.

43. The system of Government in Hong Kong had developed in response to the circumstances of the Territory, and had evolved from a network of boards and committees to a more representative structure, and by 1984 non-official members of the Legislative Council were in the majority. At that time, however, all members were appointed rather than elected to the Council. The ensuing years had seen a cautious and gradual approach towards representative government, and substantial progress had been achieved. Recent developments in that regard were outlined in paragraph 86 of his Government's update to its third periodic report (CCPR/C/58/Add.11).

44. The Joint Declaration was a legally binding treaty which provided that all the provisions of the Covenant, including reporting obligations, would remain in force after 1997. The precise modalities would be discussed in due course, and he was grateful for the Committee's suggestions in that regard. It also provided for action to be taken by China and the United Kingdom to ensure continued application of international rights and obligations affecting Hong Kong, including the Covenant. On the question of possible breaches, the status of the Joint Declaration as an international treaty ensured that any breaches would be regarded as a very serious matter.

45. Replying to questions relating to the Optional Protocol, he said that his Government had noted the growing number of Parties to that instrument, including some of the States members of the Council of Europe which also accepted the right of individual petition under the European Convention. Most of the Territories to which the Covenant applied were within the Council of Europe system. The European Convention and the First Protocol thereto extended to Guernsey, Jersey, the Isle of Man, Bermuda, the British Virgin Islands, the Cayman Islands, the Falkland Islands, Gibraltar, Montserrat, St. Helena and the Turks and Caicos Islands. Of those, all but the British Virgin Islands, the Cayman Islands and the Isle of Man accepted the right of petition under article 25 of the European Convention and the jurisdiction of the European Court under article 46. The acceptance of the right of petition had recently been renewed for a further five-year period in respect of the United Kingdom itself and also the Territories concerned. Those territories which were not so far included did not wish the right of petition to apply to them and the United Kingdom respected their position. The only territories in which the Covenant, but not the European Convention, applied were Pitcairn and Hong Kong. The Government was concentrating, in regard to the latter, on implementation of the Joint Declaration and the Bill of Rights.

46. Mr. STOCK (United Kingdom) assured members of the Committee that the Hong Kong Administration took their observations very seriously, as evidenced by the large delegation of Hong Kong officials there present and the attendance of representatives of non-governmental organizations from Hong Kong. The views of those NGOs as well were taken very seriously by the Hong Kong Administration. The Hong Kong Bill of Rights Bill 1990 reproduced the text of the Covenant as applied to Hong Kong, one reason being that the Joint Declaration stipulated that the provisions of the Covenant as applied to Hong Kong should remain in force after 1997 (CCPR/C/58/Add.11, para. 3).

47. Speaking to the specific concerns voiced by Committee members, he clarified that, indeed, the Bill of Rights was not entrenched and enjoyed the same status as any other ordinance - in other words, it could be amended or repealed. Appeals for entrenchment had been voiced in Hong Kong early on and the Administration was not insensitive to them. It would be difficult, however, to entrench the Bill of Rights through the special voting mechanisms employed in other jurisdictions. Those problems had been recognized, for example, in the Submission of the Hong Kong Bar Association to the United Nations Human Rights Committee on the Third Periodic Report on Hong Kong. One reason was that the Bill of Rights had been framed so as to embody the provisions of both the Covenant and the Joint Declaration in one instrument that would survive the 1997 transition. To that end, the Bill of Rights could not contravene the Basic Law, which provided for special voting procedures only in limited and prescribed circumstances, and which further provided that legislation could be adopted by simple majority. Laws limiting the competence of certain dependent Territory legislatures to adopt special procedure legislation would have represented yet another difficulty.

48. He wished to draw attention, however, to article 39 of the Basic Law, which stipulated that any restriction on freedom must not contravene the Covenant. He had been informed that the Government of the United Kingdom would seek to entrench the Covenant by amending letters patent, a procedure which would not be contrary to the Basic Law. Therefore, although the Bill of Rights per se would not be entrenched, the end result would be the entrenchment of the Covenant as applied in Hong Kong.

49. In response to questions by Committee members, legislative review was an ongoing process, as borne out by improvements made to the legislation from time to time, even before the Bill of Rights was introduced. He drew attention to proposals to reform police powers to stop and search and the laws on homosexuality. In addition, the Law Reform Commission was examining the rights of privacy with specific reference to the Covenant, and the question of illegitimacy. A "freeze" on existing legislation had been declared as a precautionary measure. The purpose was to prevent lacunae from arising should an existing law be struck down by the new Bill of Rights, especially in the area of law enforcement. A one-year freeze had been imposed on all existing legislation, and it could well be renewed for an additional year. A number of groups had voiced opposition to the blanket freeze and had suggested various alternatives. The Government had carefully considered those representations and its response would be made public in the very near future.

(Mr. Stock, United Kingdom)

50. In response to questions about the composition of the legislature in 1996, he said that while democracy in Hong Kong had been encouraged, in view of recent history it seemed unlikely that it would come about. In 1985, the legislature of Hong Kong had been elected for the first time. Two members of the legislature had been chosen by urban and regional councils, 10 district board members had been chosen through an electoral college and 12 members had been chosen through functional constituencies, composed of representatives of economic, professional and social groups. After the Government had issued a 1988 White Paper announcing a plan for 1991, the complexion of the legislature had changed; 14 members had been elected by the functional constituencies and 12 through the electoral college. There were 20 appointed members and 10 officials. A review of the 1988 decision, concluded in 1990, recognized the demand for more rapid political development. As a result, a new legislature to be formed in October 1991 would consist of 18 directly elected members, 21 members elected through the functional constituencies, 18 appointed members and three officials, i.e., substantially fewer officials than in the previous system.

51. On the day that the Basic Law had been promulgated, the National People's Congress of the People's Republic of China had issued a decision on the future composition of the Hong Kong Special Administrative Region. That decision prescribed a 60-member legislature - 20 to be directly elected; 30 to be elected through the functional constituencies; and 10 to be returned by the electoral committee. Elections would take place again in 1991, and after that, in June 1995. It was hoped that any disruption in the electoral system would be kept to a minimum during the 1997 transition.

52. Mr. DYKES (United Kingdom), replying to questions by Committee members, said that the Law Reform Commission in Hong Kong had been established 10 years earlier and was composed of 15 members, including the Attorney General, the Chief Justice and a law draughtsman, who was responsible for the preparation of all legislation in Hong Kong. The other 12 members included judges, academics, lawyers and eminent persons. The work was delegated, on the advice of the Attorney General and Chief Justice, to subcommittees dealing with special issues thought to represent legal problems. As indicated in the third periodic report and update, the Commission had an extremely full agenda and it was not unusual for the study of each special issue to take up to two years. The subcommittee on arrest and detention, for example, had begun its work in January 1989 and was expected to finish in 1991.

Self-determination (article 1 of the Covenant) (section II of the list of issues)

53. The CHAIRMAN read out section II of the list of issues concerning the third periodic report of the United Kingdom of Great Britain and Northern Ireland, concerning, namely (a) the prospects for a definitive resolution of the situation in Northern Ireland; and (b) plans to consult the inhabitants of Hong Kong about their attitude towards their envisaged status after 1997. He noted that replies had already been given to (b).

54. Mr. HALLIDAY (United Kingdom), referring to section II (a), noted that terrorism in Northern Ireland was a continuing problem and that the Government of the United Kingdom was still attempting to counter it. At the same time, it was intent on realizing progress on all fronts, particularly the economic, social and political front in its effort to curb terrorism. Unfortunately, terrorist elements were not always cooperative in that regard.

55. The Anglo-Irish Agreement of 1986 remained an important foundation for action, although the Governments of both the United Kingdom and the Republic of Ireland were prepared to contemplate changes in it. The Agreement was a binding treaty which stipulated that the status of the Republic of Ireland was to be determined by the democratic choice of the people of Northern Ireland. It also recognized the unique relationship between the United Kingdom and the Republic of Ireland and facilitated broader cooperation between the two Governments on a number of matters, including security measures. Negotiations within that framework had been pursued for some time, owing in large part to the complexity of the objectives fixed.

56. In his announcement of 26 March 1991, the Secretary of State for Northern Ireland had hailed the establishment of a basis for formal political talks. It represented the culmination of 14 months of preliminary exchanges between the Secretary of State, the Irish Government and the four main constitutional parties in Northern Ireland - the Alliance Party of Northern Ireland, the Social Democratic and Labour Party, the Ulster Democratic Unionist Party and the Ulster Unionist Party. The British and Irish Governments, as the two signatories to the Anglo-Irish Agreement, would be willing to consider a new, more broadly based agreement if arrived at through direct negotiation among all parties concerned. In order to allow wider political dialogue to develop, they would not hold a meeting of the Anglo-Irish Conference between two pre-specified dates. In his announcement, the Secretary of State had also indicated that discussions would focus on three main relationships: those with Northern Ireland, including the relationship between any new institutions and the Westminister Parliament; relationships among the people of the island of Ireland; and relationships between the two Governments.

57. Three sets of related discussions would take place within weeks of each other. All Northern Ireland parties would participate actively and directly in the North/South discussions. The Unionist parties wanted their participation to be formally associated with the presence of the Secretary of State and would regard themselves as members of the United Kingdom team. At the earliest possible date, substantive talks between the parties in Northern Ireland would be initiated under the chairmanship of the Secretary of State. He would propose initiation of the other two strands at such time as he deemed appropriate. The announcement by the Secretary of State had been widely welcomed in the House of Commons, which had, none the less, recognized that it marked only the beginning of a very long, difficult process.

58. Mr. AGUILAR, referring to Part III, section F, paragraph 17 of the report and the "extensive powers of consultation" in Hong Kong, mentioned by Mr. Beamish, asked for further details as to how the population had been consulted, since apparently, a plebiscite had never been taken. Specifically, it was not clear why

(Mr. Aguilar)

the population of Hong Kong Island and Kowloon had not been included, when China had relinquished them in perpetuity to the United Kingdom and they were major population centres.

59. He was concerned about the potential for discrimination in an electoral system which relied on functional constituencies. It seemed that, under that system, representatives of certain economic and professional sectors would have an unfair advantage. Lastly, referring to annex II of the Basic Law, he requested additional clarification on the breakdown of membership in the National People's Congress.

60. Referring to Part III, section C, paragraph 10 of the report, he requested clarification on the seeming contradiction in the Cayman Islands whereby legislation in contravention of the Covenant could be revoked but new laws which might also be in violation, could be adopted.

61. Mr. WAKO welcomed the fact that the people of Hong Kong had been consulted at every stage in the drafting of the Basic Law, but wondered whether the results of those consultations truly reflected the will of the people. For example, he had learned that of the 23 representatives of Hong Kong on the Basic Law Consultative Committee, two had resigned or been expelled and he wished to know why. Of those persons interviewed, only 1 per cent had claimed to have read the draft, which raised questions as to how widely it had been circulated. Moreover, 90 per cent of the people of Hong Kong had stated their preference to remain a colony of the United Kingdom over becoming independent, and only 15 per cent had favoured integration with China. The Hong Kong legislature had rejected the Basic Law only three hours after it had been adopted in China in April 1990. In the light of those reports, he wondered whether the principle of self-determination had truly been enforced.

62. Mr. MAVROMMATIS, referring to paragraph 18 of the report on the exercise of self-determination through the electoral system, asked whether consideration had been given to changing the simple majority procedure. It was his understanding that, under the British system, it was possible for a party to have a majority of votes and not be represented by a single Member of Parliament.

The meeting rose at 6.10 p.m.

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Forty-first session

SUMMARY RECORD OF THE 1047th MEETING

Held at Headquarters, New York,
on Tuesday, 2 April 1991, at 10 a.m.

Chairman: Mr. POCAR

later: Mr. WAKO (Vice-Chairman)

later: Mr. POCAR (Chairman)

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The meeting was called to order at 10.10 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (continued)

Third periodic report of the United Kingdom of Great Britain and Northern Ireland (continued) (CCPR/C/58/Add.6, 11 and 12)

1. At the invitation of the Chairman, Mr. Halliday, Mr. Beamish, Mr. Stock, Mrs. Evans and Mr. Dykes took places at the Committee table.

2. The CHAIRMAN invited members to resume consideration of section II of the list of issues, which had been held over from the preceding meeting.

3. Mr. PRADO VALLEJO inquired whether the United Kingdom was making any effort to resolve its dispute with Argentina regarding the Falkland (Malvinas) Islands.

4. Mr. SADI noted that the right to self-determination in the United Kingdom had been explicitly defined in paragraph 18 of the United Kingdom's report (CCPR/C/58/Add.6). He wished to know whether the United Kingdom would be prepared to use the same formulation with respect to its dependent territories, including Hong Kong.

5. Mr. HALLIDAY (United Kingdom) said that his country had no intention of introducing proportional representation for elections to the Parliament of the United Kingdom. He believed that the Covenant allowed Governments to choose the methods they deemed most suitable for elections to their national parliaments. While it was true that the system used in the United Kingdom might not produce results in terms of which the number of members of Parliament directly reflected the number of votes cast, it was also true that elections held under the proportional representation system tended to result in no overall majority for any single party. The latter situation gave rise to the need to form coalitions in order to implement various programmes, policies and activities which had not necessarily been put before the electorate during the election. People who favoured the system in use in the United Kingdom believed that the system of proportional representation could give minority parties a disproportionate influence in Parliament and create a risk greater than that which existed under the current arrangements.

6. There was full, free and open debate on the issue of proportional representation in the United Kingdom. At various times, different parties had put forward proposals on the subject, and there was ample opportunity for such proposals to be debated in Parliament.

7. Mr. BEAMISH (United Kingdom) said that a number of questions had been asked regarding the interrelationship between the Basic Law of Hong Kong Special Administrative Region, the Sino-British Joint Declaration on the Question of Hong Kong and the Covenant. Article 19 of the Basic Law provided that the Hong Kong Special Administrative Region would be vested with independent judicial power,

(Mr. Beamish, United Kingdom)

including that of final adjudication. The second paragraph of article 158 of the Basic Law stated that "the Standing Committee of the National People's Congress shall authorize the courts of the Hong Kong Special Administrative Region to interpret on their own, in adjudicating cases, the provisions of this Law which are within the limits of the autonomy of the Region". The majority of the provisions of the Basic Law fell into that category. The third paragraph of article 158 set out the specific circumstances in which Hong Kong courts must seek an interpretation from the Standing Committee concerning affairs which were the responsibility of the Central People's Government or which concerned the relationship between the Central Authorities and the Region. The Basic Law applied both to the Central Authorities and to the Special Administrative Region and the courts of the Special Administrative Region could not be expected to have exclusive competence to interpret the provisions concerning the relationship between the Central Authorities and the Special Administrative Region.

8. There was no danger that the phrase "as applied to Hong Kong", contained in article 39 of the Basic Law, would result in an imperfect implementation of the Covenant in Hong Kong. Every effort would be made to remedy any inconsistencies which might arise between the application of the Covenant in law and its implementation in practice. The United Kingdom would continue to keep under review the possibility of lifting any reservations pertaining to Hong Kong. If a decision was taken to remove a particular reservation, the United Kingdom would have to consider the implications for the Joint Declaration and the need to ensure the continuity of the relevant obligations after 1997.

9. With regard to article 20 of the Basic Law, he said that it was not appropriate for Her Majesty's Government to comment on the drafting history or the interpretation of an article in a Chinese law unless there was some concern that that article was not in keeping with the Joint Declaration. If the Committee was interested in article 20 in the context of the entrenchment of the Hong Kong Bill of Rights in the legislation of the Special Administrative Region, it should refer to the second paragraph of annex II (II), which dealt with the passage of government bills by a simple majority vote.

10. In the light of the promulgation of the Basic Law of the Hong Kong Special Administrative Region by the National People's Congress, the Legislative Council had urged the Chinese and British Governments to take into account the interests of the people of Hong Kong, and to help Hong Kong to surmount its problems, both before and after 1997. It had also urged the National People's Congress to amend, at a suitable time, the relevant clauses of the Basic Law according to the recommendations contained in the comments on the Basic Law in order to preserve Hong Kong's prosperity and stability. The Hong Kong Government had issued a statement to the effect that the drafting of the Basic Law was a matter for the Chinese authorities and that its concern was to ensure consistency with the Joint Declaration. The Hong Kong Government had welcomed the intensive consultations which China had conducted with the people of Hong Kong during the drafting process, and had pointed out that efforts had been made to take account of the concerns expressed by Hong Kong during the consultation process. The Hong Kong Government

(Mr. Beamish, United Kingdom)

had noted that it would not be appropriate to comment on the resignation or expulsion of certain members of the Basic Law Drafting Committee or Consultative Committee.

11. A question had been asked regarding that part of the territory of Hong Kong which was not subject to the lease which expired in 1997. Under the Treaty of Nanking of 1842 and the Convention of Peking of 1860, Hong Kong Island, the southern part of the Kowloon Peninsula and Stonecutter's Island had been leased to the British Government in perpetuity. The rest of the territory of Hong Kong, comprising 92 per cent of the total land area, had been leased to Britain for 99 years, from 1 July 1898, under a further convention signed at Peking in that year. The leased area, consisting of the areas north of Kowloon up to the Shenzhen River, and 235 adjacent islands, was known as the New Territories.

12. The Chinese Government had consistently taken the view that the whole of Hong Kong was Chinese territory. For many years, the Chinese position had been that the treaties relating to Hong Kong were unequal and that the question should be settled peacefully through negotiation when the time was ripe. Over the years China had made clear its position that the settlement of the question of Hong Kong was a matter of China's sovereign right. The expiry of the New Territories' lease on 30 June 1997 had made it necessary to deal with the question of Hong Kong's future as soon as possible after China's emergence from the Cultural Revolution. It was clear that the remaining 8 per cent of Hong Kong's land area would not be viable without the New Territories, which contained most of the territory's agriculture and industry, its power stations and its airport and container port. Moreover, by the late 1970s, concern about the future of Hong Kong, both locally and among foreign visitors, had begun to grow. The inability of the Hong Kong Government to grant new land leases in the New Territories extending beyond 1997 had been a particular problem.

13. The United Kingdom's views on self-determination were contained in its report. The extent to which and the manner in which self-determination was exercised in any particular territory depended on the particular circumstances and conditions in that territory. The people of the Falkland Islands, for example, expressed their views in regular elections and there was no doubt that their wish was to remain under British sovereignty.

14. Mr. Prado Vallejo had asked whether the United Kingdom was taking any steps to resolve its dispute with Argentina over the Falkland Islands. In 1990, when the United Kingdom and Argentina had agreed on the resumption of full diplomatic relations, they had also agreed that the Falklands issue should be discussed under a "sovereignty umbrella". Since that time, the British and Argentine Governments had been able to agree on a number of issues relating to activities in the Falkland Islands and in the South Atlantic region in general. The "sovereignty umbrella" had promoted a degree of practical and effective cooperation between the Governments.

(Mr. Beamish, United Kingdom)

15. A question had been raised regarding apparent inconsistencies in the Constitution of the Cayman Islands. Under the Cayman Islands Royal Instructions, the Governor could not assent to any bill the provisions of which appeared to be inconsistent with obligations imposed by treaty without the prior instructions of Her Majesty through a Secretary of State. It followed that, if the Governor deemed a bill to be inconsistent with a treaty, he was obliged, under section 39 (2) of the Constitution, to seek instructions on the matter from London. The question of consistency of the bill with the treaty would be examined and, if the bill was found to be inconsistent with treaty obligations, assent would not be given.

16. The disallowance procedure, set forth in section 41 of the Constitution of the Cayman Islands, provided that any law to which the Governor had given his consent could be disallowed by Her Majesty through a Secretary of State. Once the law had been disallowed, notice to that effect was published and the law was annulled with effect from the date of publication. One ground on which a law might be disallowed would be that it was inconsistent with a treaty obligation. Those formal procedures were applied very rarely, since the greatest care was taken to ensure that bills were compatible with treaty obligations.

17. The United Kingdom rejected most firmly any suggestion that the use of force by the allied coalition in the Persian Gulf conflict had been excessive. The allied side had endeavoured to keep civilian casualities to a minimum and to stay strictly within the confines of the laws and customs of war. The United Kingdom's forces had been deployed alongside those of other members of the international coalition in response to an appeal made by countries of the region for assistance in the defence of their territory following Iraq's invasion of Kuwait. Such assistance had been rendered in accordance with the Charter of the United Nations.

18. There was a great need for humanitarian assistance to the peoples of the region, especially the peoples of Kuwait and Iraq. The extent to which humanitarian assistance could be provided to the people of Iraq was limited by the internal situation in that country. The United Kingdom had played a full and positive role in the deliberations of the Security Council Committee established by resolution 661 (1990) concerning the situation between Iraq and Kuwait. The decision taken by that Committee on 22 March 1991 should ensure that humanitarian assistance reached those in greatest need in all parts of Iraq.

19. Mr. STOCK (United Kingdom) said that the establishment of functional constituencies in Hong Kong had been the first step taken towards the progressive development of representative government at the central level in Hong Kong. The functional constituencies partly replaced the Governor's appointment of representatives of major professional, social and economic groups, and they appeared to have worked successfully. He drew attention to article 68 of the Basic Law, which stated that "the ultimate aim is the election of all the members of the Legislative Council by universal suffrage". Annex II (III) of the Basic Law would allow for the phasing out of the functional constituencies after the third term of the legislature of the Special Administrative Region.

20. Mr. EL-SHAFEI said that he had requested the delegation of the United Kingdom to explain the implication of article 20 of the Basic Law in the context of the Committee's efforts to understand the interrelationship between the Basic Law, the Joint Declaration and the Hong Kong Bill of Rights. He inquired whether additional powers would be given to the legislature or the executive in Hong Kong after 1997 and, if so, in what areas such powers could be granted.

21. Mr. BEAMISH (United Kingdom) said that article 20 was an intentionally permissive formulation, and it would be incorrect for his delegation to make any further comments on that article, since such comments could be only of a speculative nature.

State of emergency (article 4 of the Covenant) (section III of the list of issues)

22. The CHAIRMAN read out section III of the list of issues concerning the third periodic report of the United Kingdom, namely: the provision of information, with reference to paragraphs 57 to 60 of the report, concerning the Government's current views on the problem of extended detention.

23. Mr. HALLIDAY (United Kingdom) said that the power to arrest a person suspected of terrorist activities and to detain the suspect for a maximum period of seven days was not in any sense arbitrary. In practice, the suspect was very rarely detained for the full seven days; more often, detention lasted no more than five days. Detention had to be justified by the need to collect evidence which would be usable in an ordinary criminal case.

24. With respect for the need for the power, account must be taken of the terrorist threat which, regrettably, continued to exist. Between 1 January 1978 and 31 December 1990, 1,089 people had been killed, of whom 615 had been civilians, as a result of terrorist violence in connection with the affairs of Northern Ireland. During the same period, 12,652 people had been injured, of whom more than 7,300 had been civilians. The figures for the whole period during which such activities had been going on were of course very much larger. In 1990, more terrorist acts had been reported in the United Kingdom than at any time since 1975.

25. One of the features of terrorist activities was the extreme difficulty in obtaining evidence, not least because of the fear which terrorist activities engendered in people who might otherwise be willing to help. Time was needed to collect, examine and analyse forensic evidence and to pursue leads and bits of information which might result in the establishment of a prima facie criminal case. That required patience in questioning and application in following up inquiries which might be conducted in other parts of the country or in other countries and involve other agencies and police forces. It was for that reason that the relatively small additional time was required.

26. The possibility of incorporating some form of judicial procedure into such arrangements had been seriously considered but that involved many difficulties. Often, evidence giving rise to suspicion could not be disclosed because of the danger which disclosure would create for the source of the information. That

(Mr. Halliday, United Kingdom)

introduced into the process an element of non-disclosure, which was incompatible with a truly justiciable process during which all evidence would be made available to the suspect, who might then be in a position to make some form of appeal. Thus, any review process during the period of detention would have to be executive rather than judicial, even if a judicial figure was asked to take on the task.

27. Safeguards existed to protect those who had been arrested and were being questioned under the powers, which in any event were subject to regular parliamentary scrutiny and debate. There was an annual parliamentary review to consider whether the powers as a whole should be renewed, and on four separate occasions they had been examined in minute detail. There was also an annual independent scrutiny of and report on the way the powers operated. A significant number of ordinary criminal charges arose from arrests and questioning authorized under the powers. Safeguards for individuals had been improved: a new provision had been introduced requiring scrutiny of the grounds for detention during the first 48 hours by a senior police officer not directly involved in the case. After the first 48 hours any extension of detention had to be authorized by the Home Secretary personally, and when applications were made for such extension specific reasons had to be given, along with an indication of what was expected to result from further questioning. Normally extension of detention was for three days; seldom was it for longer.

28. Mr. PRADO VALLEJO said that it was his understanding that under the Immigration Act, 1971, it was possible to dispense with the protection which the law would normally provide to suspects, and to detain people indefinitely without trial and with no right of appeal. If that were so it would be a matter of some concern, and consideration would have to be given to whether the practice was compatible with the provisions of article 9 of the Covenant.

29. Ms. CHANET welcomed the fact that the United Kingdom delegation had spoken of more encouraging prospects for Northern Ireland, especially in light of the recent decision to hold round-table talks, which, in her view, would be the best way of dealing with terrorism. However, Northern Ireland was still under a state of emergency, and it was for the Committee to consider whether the derogations entered under article 4 of the Covenant accurately reflected the actual situation. The derogation in respect of extension of detention had been made solely with regard to article 9 (3) of the Covenant, and she wondered if there were any other of its provisions for which derogation was necessary with regard to Northern Ireland.

30. She mentioned article 14 (3) (g) regarding the guarantee not to be compelled to testify against oneself, and asked how legislation applicable in Northern Ireland, especially the Northern Ireland (Emergency Provisions) Acts of 1978 and 1987, with respect to the admissibility of evidence was to be reconciled with the right of the accused to remain silent. There had not been any derogation of obligations under article 14 (3) (g), and it was important for the Committee to understand how the relevant emergency provisions were applied in Northern Ireland. If there were a presumption of guilt, it would be contrary to the Covenant, but if it were a matter of simple admissibility which made it possible for a court to

(Ms. Chanet)

retain its authority to decide, there might be no need for derogation. She would welcome clarification of how the procedures referred to in paragraph 114 of the report were applied in practice.

31. The report stated that the application of conditional release in Northern Ireland was ruled out because of the fact of terrorism, and she would welcome assistance in interpreting that reference in view of the possibility that it constituted a derogation of article 10 (3) of the Covenant, which stated that the essential aim of the treatment of prisoners should be their reformation and social rehabilitation.

32. Mr. AGUILAR noted that there were a number of laws of an emergency nature in the United Kingdom which involved derogations of articles of the Covenant, and he observed that there seemed to be a policy on the part of the Government of the United Kingdom of maintaining derogations of human rights obligations in perpetuity. In November 1989 the Home Secretary had told the United Kingdom Parliament that the derogation under article 4 of the Covenant would remain in place for as long as circumstances required. Clarification was sought as to what specific powers the United Kingdom Parliament possessed in its regular reviewing of emergency legislation, for the report suggested that it was the emergency legislation itself that set the rules, rather than that Parliament was in a position to take decisions regarding application of that legislation. He expressed concern about the reversal of the initial onus of proof, referred to in paragraph 114 (c) of the report, which replaced the presumption of innocence with the presumption of guilt, and sought clarification as to those cases in which refusal to testify against oneself could be considered virtually tantamount to a confession. If use of the Immigration Act, 1971, to detain Iraqis and Palestinians on grounds of an alleged threat to national security constituted a derogation of article 9 of the Covenant, no such derogation had been communicated to the Committee through the Secretary-General.

33. As far as terrorism legislation was concerned, there had been derogation of obligations under article 9 (3) of the Covenant, but to judge from what had been said by the Home Secretary there was also implicit derogation of other articles, notably article 14 (3) and a number of its subparagraphs. There had been several occasions when that article had not been applied, and the absence of any explicit derogation of it was tantamount to a violation of its provisions.

34. Dealing with the application of article 4 of the Covenant in the case of Hong Kong, the report referred to a number of emergency regulations, including Emergency (Principal) Regulations specifying procedures to be followed in particular areas of concern when the Emergency Regulations Ordinance had been brought into effect. Paragraph 30 (d) (vi) referred to "miscellaneous provisions", without indicating their nature or what rights could be derogated under them. Likewise, the reference in paragraph 30 (d) (vii) to "specific offences and penalties" failed to indicate the nature of the offences referred to and how they might be punished. In paragraph 29 of the same section of the report, it was stated that in the context of consideration of a local bill of rights, thought was being given to the

(Mr. Aguilar)

inclusion of a clause that would explicitly preclude the introduction of any legislation that would derogate from the International Covenants, and he wondered whether that legislation had been promulgated and if so whether it applied in cases of emergency.

35. Mr. Wako (Vice-Chairman) took the Chair.

36. Mr. MYULLERSON expressed concern about derogation in respect of Northern Ireland from the obligations under article 9 of the Covenant, because there had been cases connected with Northern Ireland in which people - notably the Guildford Four and the Birmingham Six - had been sentenced to long terms of imprisonment under terrorism legislation but had later had those sentences quashed. Such cases indicated that derogation was fraught with the danger that innocent people might be convicted and sentenced while genuine terrorists remained at liberty. Even in cases connected with terrorism it was of the utmost importance strictly to respect the requirements of due process.

37. Mr. DIMITRIJEVIĆ noting that article 18 (4) of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China provided for the possibility of the Standing Committee of the National People's Congress deciding that the Region was in a state of emergency by reason of "turmoil" which endangered national unity or security and was beyond the control of the government of the Region, expressed concern that the wording adopted in the Basic Law was not as strict as that found in article 4 of the Covenant, which referred to a public emergency which threatened the life of the nation and the existence of which was officially proclaimed. The statement in article 18 (4) that the central Government of the People's Republic of China might issue an order applying the relevant national laws in the Hong Kong Special Administrative Region was cryptic; it was not clear what it meant and whether it might include the curtailment of certain rights. The provision in question might be interpreted as authorizing derogations of rights in situations that were not as serious as those envisaged in article 4 of the Covenant. Moreover, the Basic Law made no provision for notification of any such state of emergency to the States parties through the Secretary-General of the United Nations, as required by article 4 of the Covenant. The Committee should appeal to the Government of the United Kingdom to see to it that article 4 would be respected in its entirety by the Government of the People's Republic of China after 1 July 1997.

38. Mr. EL-SHAFEI said that he, too, was concerned about the power given to the Standing Committee of the National People's Congress of the People's Republic of China to declare a state of emergency in the Hong Kong Special Administrative Region. He asked for a definition of "turmoil", and said he feared that any public manifestation of the popular will in Hong Kong could be used to justify the imposition of a state of emergency. He had a similar worry about the definition of the phrase "national unity or security", also used in article 18 (4) of the Basic Law. Article 4 of the Covenant imposed limitations on the powers of derogation, and he was concerned to know whether the derogation from statutory laws in Hong Kong corresponded to the derogations prescribed by article 4, and whether the

(Mr. El-Shafei)

relevant national laws referred to in article 18 (4) were applicable in a state of emergency in Hong Kong, and corresponded to the provisions of the Covenant. Article 14 of the Basic Law referred to possible intervention by military forces, and he sought an explanation of the extent to which those military forces could be used in cases of "turmoil". The Committee needed assurances concerning the limitation of the power to declare a state of emergency in the Hong Kong Special Administrative Region.

39. Mr. SADI said that in the United Kingdom the Home Secretary enjoyed sweeping powers under the Immigration Act, 1971, to detain foreigners indefinitely without trial and with no right of appeal. In order to continue to enjoy those powers, the Government of the United Kingdom should make an express derogation from its obligations under articles 9 and 13 of the Covenant, and he asked if such derogation was under consideration.

40. Mr. LALLAH said that, with regard to Hong Kong, he had no doubt that the Government of the United Kingdom and the Committee shared a common desire, which was to ensure that the provisions of the Covenant would continue in force. He would therefore simply associate himself with the concerns regarding Hong Kong expressed by Mr. Dimitrijević and other members of the Committee.

41. With regard to Northern Ireland, the United Kingdom position that the situation required extraordinary powers was understandable; it was nevertheless important to ensure that certain minimum standards were maintained. The derogations from article 4 of the Covenant could be regarded as permissible only to the extent that they were required by the exigencies of the situation. However, in view of the considerable number of people arrested and detained beyond the seven-day period, he wondered what safeguards had been established against abuse of that lengthy period of detention, in particular, for the purpose of detecting and punishing ordinary offences.

42. It was his understanding that the European Court of Human Rights had ruled against the United Kingdom in the case of Brogan and Others. He asked the representative of the United Kingdom to comment on that ruling and on how his Government intended to comply with the European Convention as well as the International Covenant. In that connection, he noted that the Statutory Commission on Human Rights had held that the Northern Ireland (Emergency Provisions) Act should be revised and the seven-day detention period dropped. What seemed important with respect to the cases under discussion was the reasonableness of the derogation from article 9 (3) and the question of judicial control. There were also serious concerns relating to possible violations of article 14 (2) and (3) (g), although article 14 was not one of those in respect of which any derogation had been made. There seemed no reason why Northern Ireland could not have been treated like England and Wales in that respect.

43. He was in complete sympathy with the view that terrorism must be prevented, but it must be borne in mind that terrorism aroused enormous social prejudice from which persons accused of terrorism sometimes suffered. It was all the more

(Mr. Lallah)

desirable, in view of the seriousness of the offences involved, that care should be taken to ensure that accused persons enjoyed at least the minimum guarantees of human rights.

44. Mr. MAVROMMATIS said that his concerns related not to article 4 of the Covenant but to articles 14 and 9. He shared the doubts of Ms. Chanet, Mr. Lallah and Mr. El-Shafei, with regard to the degree to which the legislation to which they had referred complied with article 14. He did not wish to be taken as casting doubt on the seriousness of the situation in Northern Ireland but it seemed clear that it must be kept under constant review from the point of view of human rights.

45. Mr. HALLIDAY (United Kingdom) said he wished to make clear that the Government's powers to deport under the Immigration Act applied only to a specific category of persons and that the persons to whom it was applied had the right of appeal with the exception of those whose deportation was ordered specifically on grounds of national security. Moreover, detention was avoided wherever possible, could only occur in cases where grounds for deportation existed and could continue only as long as the grounds for deportation continued to exist. Nor did detention involve denial of access to the courts, which continued to exist and had been made use of. It was therefore his Government's position that its detention powers under the Immigration Act were consistent with the Covenant. In the cases to which reference had been made which involved Iraqis and Palestinians, deportation action had been taken in connection with a very specific threat and the dangers flowing from it. It should also be pointed out that not all those deported had been previously detained.

46. With respect to parole in Northern Ireland, he stressed that the fact that a system of parole was available in the United Kingdom but not in Northern Ireland had to do with the difficulty of operating such a parole system in Northern Ireland. The differences between Northern Ireland and in the rest of the United Kingdom in respect of parole would be narrowed when the Criminal Justice Act currently before Parliament came into effect.

47. With respect to the Birmingham Six, it was important to remember that, the cases to which members of the Committee had referred were different in that they had been prosecuted under anti-terrorist legislation. In cases such as that of the Birmingham Six there was provision for both appeal and compensation.

48. His colleague Mrs. Evans would provide the Committee with further information concerning the Brogan case.

49. Mrs. EVANS (United Kingdom) said that, in the case referred to, the European Court had found no breach of article 5, paragraph 1, including paragraph 1 (c) or of article 5, paragraph 4 of the European Convention, which corresponded to Article 9 of the International Covenant. The Court had found that there had been a violation of article 5, paragraph 3 and article 5, paragraph 5, but it had made clear its understanding of the difficult situation the United Kingdom Government faced in Northern Ireland, and had not held that the legislation under

(Mrs. Evans, United Kingdom)

consideration was either unnecessary or undesirable. It should be pointed out that although the Court had the right to grant compensation, it had not done so in the case under consideration. Nor had the Committee of Ministers of the Council of Europe, to which the case had been referred as a matter of course, seen fit to pursue the matter any further.

50. She added that statutory rights existed in both the rest of the United Kingdom and Northern Ireland giving detained persons access to lawyers and concerning the provision of information to families of detainees, although the exercise of those rights could be delayed for 48 hours in very clearly specified circumstances.

51. Mr. Pocar resumed the Chair.

52. Mr. STOCK (United Kingdom), returning to the question of Hong Kong, reminded Mr. Dimitrijević that the obligations arising from the Covenant were enshrined in the Sino-British Joint Declaration and in article 39 of the Basic Law.

53. In the application of the Basic Law, including article 18, there was an international obligation, as reflected in article 39, and it was the expectation of the United Kingdom that that obligation should prevail. Article 11 of the Basic Law provided that no law could be enacted which would contravene the Basic Law, and that included article 39 which required that the provisions of the Covenant, should be implemented through the laws of Hong Kong.

54. As to the situation with regard to emerging regulations, clause 5 of the draft Bill of Rights dealt with public emergencies and, in effect, reproduced article 4 of the Covenant, which permitted derogations in time of public emergency. If any laws currently in force were to infringe the Covenant, they would be amended or repealed pursuant to the Bill of Rights. In order to resolve any inconsistency between the Covenant and any Hong Kong regulations, a comprehensive review of all ordinances in force would be carried out with the aim of ensuring strict respect for the Bill of Rights.

55. Mr. DYKES (United Kingdom) said that Hong Kong's emergency laws had first attracted the attention of the Committee in 1988, at which time the Committee had been informed that no derogations permitted under the covenant were to be found in the principal ordinance and the regulations made thereunder. The principal ordinance, which had been enacted in 1922, gave the Government the power to make regulations in a variety of areas. In fact, only 10 sets of regulations had been made, 9 of them in connection with disturbances occurring in 1967. The regulations had since then remained dormant.

Non-discrimination and equality of the sexes (articles 2 (1), 3 and 26 of the Covenant) (section IV of the list of issues)

56. The CHAIRMAN read out section IV of the list of issues concerning the third periodic report of the United Kingdom, namely: (a) with reference to paragraph 56 of the report, information on any further consideration by the Government to

(The Chairman)

reviewing the remaining discriminatory provisions under the Immigration Rules, particularly those discriminating between male and female students from abroad and wives and husbands of deportees; (b) with reference to paragraph 27 of the report, whether members of ethnic minority groups facing criminal charges were informed systematically of the relative advantages or drawbacks of opting for a trial before a jury or pleading guilty; and (c) with reference to paragraph 2 of the report relating to the States of Jersey, whether the planned legislation to ensure the equal treatment of males and females in matters of succession had been enacted.

57. Mr. HALLIDAY (United Kingdom) explained that the provisions of the immigration laws prescribing different treatment on the basis of gender were very few in number and very limited in scope. The Government was, however, faced with a difficult choice between doing away with gender discrimination in a manner that would bring hardship to categories of people who had previously not been discriminated against and weakening its control over immigration, thereby increasing pressure on the domestic labour market. The power to deport the wife of a man subject to a deportation order had not been used since 1983.

58. Mr. ANDO asked whether the Convention on the Elimination of All Forms of Discrimination against Women, which the United Kingdom had ratified, would apply to Hong Kong, in particular with respect to equal pay for equal work and family property and inheritance questions. The Basic Law had little to say on the subject, although article 25 guaranteed equality for everyone before the law. Given the tradition and customs of Hong Kong society, however, he wondered if more information could be given.

59. Mr. WENNERGREN asked why prisoners had no right to vote in the United Kingdom. The right to vote was a civic right of paramount imortance, and he wondered if it was denied to prisoners because they were second-class citizens, or because of their need for rehabilitation or because it was considered a reasonable retribution. If the prohibition on voting did not apply to individuals held in pre-trial detention he wondered why not.

60. Mr. FODOR, noting the statement in paragraph 29 of the report to the effect that the police, the courts, prosecutors and the prison system in England and Wales needed a clearly stated policy on race issues, asked what the main features of such a policy would be and why the reference was only to England and Wales. Information was given in the report only on the prison service, and he wondered what measures were taken in other areas. He asked what the justification was for the extensive privileges enjoyed by the Church of England. He wondered whether distinction between the Church of England and other churches was objective and reasonable, and asked what obstacles existed to a total separation of church and State.

61. Turning to the activities of the Commission for Racial Equality, he wondered why less than 20 per cent of the cases of alleged discrimination received assistance from the Commission and why so few of the cases supported by the Commission were successful.

(Mr. Fodor)

62. It was clear from paragraph 49 of the report that the intention of the Government in enacting the Fair Employment (Northern Ireland) Act and establishing the Fair Employment Tribunal was to strengthen the existing law against religious discrimination. It was not clear to him, however, why the establishment of a special Tribunal had been necessary, and why the ordinary courts of Northern Ireland would not be able to adjudicate such cases. He wished to know whether the Fair Employment Tribunal had a jurisdiction similar to that of industrial tribunals in England and Wales, or whether it dealt only with cases involving religious discrimination. He also wondered how the Tribunal could enforce the findings of the Fair Employment Commission. The Act required employers to monitor the religious composition of their workforce, and while appreciating the objective of the Act, he wondered how that was done in practice. He wished to know whether job applicants were required to state their religious affiliation and whether there was an optimal ratio of Protestants, Catholics and others in various job categories.

63. Mr. SERRANO CALDERA said that while the Government of the United Kingdom clearly intended to reduce religious discrimination in Northern Ireland by legislative means, he had some concerns as to how the Government could take practical measures towards that end. For example, the Northern Ireland Constitution Act of 1973 provided that any discriminatory law passed after that date would be null and void, but he did not understand what body would declare the nullity of such laws. He also was not clear on the role which the Standing Advisory Commission on Human Rights would have to play in dealing with laws enacted after 1973 which violated the 1973 Constitution Act. He wanted to know what remedies were available in accordance with article 3 (a) of the Covenant.

64. The Fair Employment (Northern Ireland) Act of 1976 was clearly aimed at making discrimination in the workplace illegal, but he wondered what mechanisms existed to give effect to the provisions of the Act. He wished to know what role the Fair Employment Commission played, and what remedies were available to individuals who were the victims of discrimination. Finally, he wished to know whether the Fair Employment Tribunal was a special or an ordinary court.

65. Referring to the 1975 Sex Discrimination Act, he asked for information on the role of the Equal Opportunities Commission.

66. Mr. MAVROMMATIS, referring to the replies given in connection with paragraph 56 of the report, said he understood the United Kingdom's dilemma but reminded it that it had an obligation to observe the provisions of the Covenant. He did not believe, for example, that allowing the entry of the husband of a female alien student would have a serious impact on the labour market. Such a fear seemed to be based on an outdated view of the roles of men and women in the labour market. Similarly, he thought that widowers had an equal need to be with their children and should be granted entry on the same terms as widows.

67. Racial equality was a preoccupation in every country which was compounded in European countries by the arrival of people from their former colonies. It had become a serious problem in the United Kingdom. In the light of the results

achieved to date in attempting to combat racial discrimination, he felt that there was a need to reconsider the mechanisms in place.

68. Turning to paragraph 27 of the report, he asked why a defendant opting for trial by jury was not made the subject of a social inquiry. In the past, social inquiries had been mandatory for all cases going to trial by jury. He also questioned the wisdom that someone pleading guilty should be able to count on being given a lighter sentence. That might be justified if the person pleaded guilty and showed remorse, but was not right if the lighter sentence was merely a recompense for lessening the backlog of court cases.

69. Mr. LALLAH said that, while the European Court of Human Rights had determined that there was no discrimination against women under the British old age pension scheme, he still had some questions regarding the treatment of women under the social security system in the United Kingdom. He welcomed initiatives to make police officers more sensitive to the discrimination and abuse to which immigrants were subjected and hoped that such initiatives might be extended to other public officials.

The meeting rose at 1.10 p.m.

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SUMMARY RECORD OF THE 1048th MEETING

Held at Headquarters, New York,
on Tuesday, 2 April 1991, at 3 p.m.

Chairman: Mr. POCAR

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Consideration of reports submitted by States parties under article 40 of the Covenant (continued)

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The meeting was called to order at 3.05 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (continued)

Third periodic report of the United Kingdom of Great Britain and Northern Ireland (continued) (CCPR/C/58/Add.6 and Add.11 and Add.12)

1. At the invitation of the Chairman, Mr. Halliday, Mrs. Evans, Mr. Stock and Mr. Beamish (United Kingdom) took places at the Committee table.

2. The CHAIRMAN said that the United Kingdom delegation would proceed to answer questions held over from sections III and IV of the list of issues.

3. Mr. HALLIDAY (United Kingdom) said that the Northern Ireland Police and Criminal Evidence Act 1984 was not a temporary measure, but rather an integral part of British criminal law. In reply to a question by Mr. Lallah, he wished to clarify the relationship between ordinary criminal law and the laws relating to terrorism. It was the policy of the United Kingdom to deal with terrorism primarily by bringing ordinary criminal charges and following ordinary criminal procedure. The power of arrest and detention discussed under section III of the list of issues was contingent on the existence of a reasonable suspicion of terrorist involvement and was aimed at facilitating prosecution for ordinary criminal offences, such as murder, manslaughter or possession of explosives and firearms. In the absence of such evidence, the person under arrest must be released, or excluded or deported.

4. In reply to another question by Mr. Lallah, he said that judicial procedure could not be applied in reviewing detentions under the Prevention of Terrorism (Temporary Provisions) Act, particularly in cases where questioning extended beyond a 36-hour period. Revealing to a terrorist suspect that certain information was known could have serious implications and could jeopardize the lives of many individuals. Such difficulties did not arise in most cases falling under the Police and Criminal Evidence Act.

5. In reply to a question under section IV (b), he said that research was being carried out on the disproportionate number of ethnic minorities in the prison population. Provisional findings had not pointed to any clear-cut trend of criminal behaviour on the part of those minorities, or to any systematic discrimination on the part of the authorities. Rather, the factors at work seemed to be far more subtle.

6. If Parliament adopted the Criminal Justice Bill, the Government would be responsible for disseminating information annually with a view to preventing racial discrimination in the criminal justice system.

7. In reply to Mr. Mavrommatis' question concerning social inquiry reports, he said that failure to submit a social inquiry report should not have adverse

(Mr. Halliday, United Kingdom)

consequences. Only if there were a finding of guilt would a full social inquiry report become necessary. The Criminal Justice Bill contained provisions for pre-sentence reports, which should help to avoid delays in court proceedings while social inquiry reports were being prepared.

8. More generally, guidance and training offered in all branches of the criminal justice system would build awareness of various risks of unconscious discrimination. Such training would accompany the implementation of the Criminal Justice Bill.

9. Referring to section IV (c), he said that legislation to ensure the equal treatment of males and females in matters of succession had not yet been enacted. It was still under review by a committee of the States of Jersey, but the draft had been prepared and was expected to be in force by the end of 1991.

10. The position on the voting rights of prisoners was aimed at maintaining good order and discipline in the prisons. It did not seem to be an unreasonable restriction in terms of the Covenant, but his delegation would certainly take note of the Committee's views.

11. The jurisdiction and the framework for non-discrimination and equality of the sexes included the establishment of a statutory law outlawing discriminatory practices. In addition to constituting a civil remedy, the law would establish a monitoring authority which would take up cases of alleged discrimination. The law would be enforced by the tribunals or courts, depending on the circumstances.

12. The report focused on England and Wales because the greatest incidence of racial discrimination occurred there. The policy described in paragraph 34 of the report related to the operational services - police, courts, prosecution, probation and prisons - and was a broad statement of principle on non-discrimination in the delivery of services. That statement was being followed up by specific action including special training and recruitment policies; attention to communication; and career advancement of ethnic minority staff. Codes of conduct outlawing discrimination existed for a number of professions, including the legal profession and probationary officers.

13. In addition, the Race Relations Act 1976 outlawed discrimination in employment and the provision of goods, facilities, services and premises. The Housing Act 1988 had been extended to include codes of practice, ensuring racial equality with respect to rented housing. The Local Government and Housing Act 1989 had extended that protection to all forms of housing. The Employment Act 1989 provided for special training geared to the needs of ethnic minorities in certain fields of employment where they were underrepresented.

14. The role of the Commission for Racial Equality was to conciliate, but where conciliation failed, it could support proceedings in court. He was unable to provide figures on the number of applications actually processed by the Commission, some of which might have been resolved through conciliation. However, the

(Mr. Halliday, United Kingdom)

Commission was indeed having an impact in the United Kingdom, particularly with its recent finding that a serving police officer had suffered discrimination. In the United Kingdom a clear framework existed for taking action against discriminatory practices. Therefore, to say that ethnic minorities were unprotected in all walks of life was a grave overstatement. However, he agreed that any such public perception must be erased.

15. The Equal Opportunities Commission of Great Britain and Northern Ireland was responsible for reviewing and, as necessary, proposing changes in equal opportunity legislation. The Commission provided assistance to victims of alleged sex discrimination and, in certain cases, provided full legal support before the industrial tribunals or the high courts. In 1990, the Commission had provided financial assistance in 188 cases. Of the cases heard, 18 had been favourable; 39 had been settled; and 19 had been lost. In reply to a question by Mr. Lallah, certain issues in the case of Barber versus Guardian Royal Exchange might be clarified once the European Court of Human Rights had issued its ruling. In conclusion, there were no plans to introduce changes in the privileges enjoyed by the Church of England, which, in his delegation's view, were reasonable.

16. Mrs. EVANS (United Kingdom), referring to fair employment legislation in Northern Ireland, said that sections 17 and 18 of the Northern Ireland Constitution Act 1973 declared void certain subordinate instruments. Section 18 established procedures whereby the Secretary of State for Northern Ireland could refer questions concerning the nullity of subordinate legislation to a judicial committee of the Privy Council.

17. The Standing Advisory Committee on Human Rights was a statutory body established by section 20 of the Northern Ireland Constitution Act. Its purpose was to advise the Secretary of State on the adequacy of legislation for the prevention of discrimination on the grounds of religious beliefs and political opinion. The Fair Employment (Northern Ireland) Act 1989, which had superseded the Fair Employment Act 1976, required employers to register with the Commission, monitor the workforce and review recruitment, training and promotion practices. It outlawed indirect discrimination - whether intentional or unintentional - and represented a significant advance over the 1976 Act.

18. Under the 1989 Act, there were two review bodies for dealing with discrimination in employment: the Fair Employment Commission and the Fair Employment Tribunal. The Commission was empowered to hear and decide on individual cases of alleged discrimination; advise prospective complainants and, in certain instances, support them in proceedings. It was also empowered to award damages for financial loss, loss of opportunity and injury to feelings. It could recommend remedial action and increase compensation for failure to take such action. It also had the right of appeal before the court of appeal. Maximum compensation was £30,000 but an adjustment for inflation was being considered.

19. In reply to a question by Mr. Fodor, she said that the Tribunal could order employers to comply with instructions of the Fair Employment Commission within a

(Mrs. Evans, United Kingdom)

certain time-frame, subject to penalties of up to £30,000 or referral to the high courts. The new Act had been in force for a short time only, but was being closely monitored. It would be formally reviewed in 1995.

20. Mr. STOCK (United Kingdom), replying to a question by Mr. Ando, said that in Hong Kong, the courts could apply customary law on succession in the New Territories. The existing customary law on the inheritance of communal land in the New Territories reflected an important element in village life. While that customary law treated women differently from men, he did not believe that it constituted discrimination under the Covenant and the proposed Hong Kong Bill of Rights Bill. In that context, he wished to note that customary law served to preserve the cultural life and moral values of the New Territories villages.

21. While priority had been accorded to the preparation of the Bill of Rights, that did not imply a lack of interest in the Convention on the Elimination of Discrimination against Women. If anything, the elaboration of the Bill of Rights had heightened awareness in Hong Kong of human rights issues, including women's rights. That understanding had also been enhanced by the Committee's comments in relation to article 26 of the Covenant. As a consequence a study was being conducted on the social, legal and economic obligations under the Convention on the Elimination of Discrimination against Women and its potential impact in Hong Kong.

Right to life (article 6 of the Covenant) (section V of the list of issues)

22. The CHAIRMAN read out section V of the list of issues concerning the third periodic report of the United Kingdom, regarding: (a) the circumstances and rules under which the military forces could take over police functions and the question of whether they could resort to the use of lethal weapons more freely than the police; and (b) the report by the Chief Inspector of Prisons for England and Wales on Suicide and Self-Harm in Prison Service Establishments in England and Wales of December 1990 and the measures undertaken in response to its findings.

23. Mr. HALLIDAY (United Kingdom) said that members of the armed forces were subject to the law as were other individuals. When summoned to support the civil authorities, they were present purely to assist as needed, and did not themselves possess police powers. Only that degree of force which was reasonable in the circumstances, traditionally interpreted as the minimum necessary, was permissible. Detailed instructions were provided on the use of firearms, indicating that they were to be used as a last resort where there was a threat to life and, where practicable, after due warning had been given. Members of the armed forces and the police could be prosecuted if they used firearms unlawfully.

24. The Government took the question of suicides and self-harm in prisons very seriously and was seeking to reduce the incidence of those phenomena, engendered by the shock of imprisonment, to a minimum. Specifically, induction procedures were being reviewed; steps were being taken to improve health care, including the use of psychiatrists in court proceedings to identify high-risk cases at an early stage; an effort was being made to improve staff awareness of the risk of suicide among

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the prison population; prison routine was being reordered to approximate more to outside life; a major construction programme was under way to address the problem of overcrowding and would result in the addition of some 25,000 new places by the mid-1990s; the remanding of juveniles into prison custody would be ended; and prisoners would be allowed greater freedom to communicate with the outside world by phone and in writing.

25. Mr. WENNERGREN, commenting on the reference in document CCPR/C/58/Add.11, paragraph 31, to the death penalty in Hong Kong, asked how many death sentences had been imposed in the past decade. In surveys much depended on how questions were phrased; thus the result of the January 1990 survey, which seemed to show that the population was in favour of retaining the death penalty, was open to question. It seemed in any event that there was no majority for retaining the death penalty, and the United Kingdom should consider abolishing the death penalty in Hong Kong before 1997.

26. Mr. AGUILAR expressed concern at the deaths among members of opposition groups in Northern Ireland, allegedly resulting from an official policy of using deadly force in response to the activities of armed groups in the province. There was evidence to suggest that such a policy existed, at least in some circles. It was a fact that the courts were often unable to conduct investigations because of a lack of cooperation, and that official investigations had actually been obstructed by the security forces, whose members had apparently been instructed to give false testimony. Amnesty International had documented 21 such cases, in all of which the accused had been acquitted or imprisoned for nominal terms. He wished to know whether steps were being taken to rectify that situation. It seemed that many suspects were killed rather than brought to trial. It should be noted that the relevant international norms called for the use of minimum force appropriate to the circumstances.

27. It would be interesting to know whether the Government intended to abolish the death penalty in dependent territories other than Hong Kong. He supported the view that the death penalty should be abolished in Hong Kong, before the territory reverted to the People's Republic of China in 1997, since the Government of that country had made liberal use of the death sentence.

28. Mr. MAVROMMATIS also called for the United Kingdom to abolish the death penalty in Hong Kong.

29. Mr. DIMITRIJEVIC asked whether the assumption of police functions by the armed forces was at the discretion of the police authorities or whether there was some specific regulation governing such situations. With regard to the death penalty, he shared the concerns expressed concerning the continued provision for the death penalty in Hong Kong, and called on the United Kingdom to adopt a uniform policy applicable to both its metropolitan territory and all its dependent territories.

30. Mr. WAKO, noting that the number of people who died in custody was on the increase in many parts of the world, welcomed the proposed implementation of reform

in that area in the United Kingdom. The question of suicide among young people in custody was of particular concern, and he welcomed the recommendation that juveniles should, as a minimum, be remanded in separate facilities.

31. With regard to the investigations of incidents involving the use of firearms by members of the police or armed forces mentioned in the report, he asked whether the individuals concerned had adhered strictly to the relevant regulations and whether any bias had been evident in the subsequent investigations. The report noted that disciplinary proceedings were possible in such circumstances, and he wished to know in how many instances such proceedings had been conducted.

32. He fully supported the views expressed by earlier speakers with regard to the death penalty in Hong Kong. Although no executions had been carried out in Hong Kong for some 25 years, the death penalty was frequently applied in the People's Republic of China, and it would be better to abolish the death penalty in the territory prior to 1997.

33. Mr. LALLAH asked for statistics on the number of deaths which had been caused by security forces in Northern Ireland and on the number of cases in which the victims had been unarmed. He also asked whether any inquiries had been held to determine whether methods other than deadly force would have sufficed in such cases to arrest suspects or to stop crimes in progress. To date, only one member of the security forces operating in Northern Ireland had been convicted of murder; he had served only two years and three months of a life sentence, and subsequently had been reintegrated into the army. Such a proceeding did not communicate an appropriate message to security forces which were called upon to intervene in civilian situations.

34. Although inquests were held to investigate killings by members of the security forces even when those responsible were not under prosecution, the names of the persons being investigated were not given in the verdicts, members of the security forces were not required to give oral evidence and legal aid was not available to the families of the victims to enable them to take part in the inquests. He asked for further comments on the inquest procedure.

35. With respect to section V (b) of the list of issues, he noted an incident of the previous year in which a non-English-speaking Zairian had arrived in London with, what immigration authorities had concluded to be, forged papers; the Zairian had not been afforded the services of an interpreter. After six days in detention, the suspect had hanged himself; a subsequent inquiry had revealed that he had been severely depressed. Currently there were another 23 Zairians imprisoned in the United Kingdom. There were also reports that asylum-seekers had been imprisoned for long periods of time and that two asylum-seekers had committed suicide in British jails following extended imprisonment. He asked what steps had been taken to prevent such tragedies and what remedies were available to persons detained under immigration powers, and in particular whether persons who had been detained for extended periods could enter actions in court claiming that their rights under articles 6 and 7 of the Covenant had been violated.

(Mr. Lallah)

36. Although the United Kingdom had expressed reluctance to introduce a bill of rights or other piecemeal legislation proclaiming human rights, it was required under article 2 (3) of the Covenant to ensure that effective remedies were available to persons whose rights had been violated. Since the legislature was the remedying authority in the United Kingdom, he asked how the provision for enforcement in article 2 (3c) could be applied.

37. Mr. SADI associated himself with those members who had advanced strong arguments in favour of immediate pre-emptive action by the United Kingdom, in accordance with its obligations under article 6 of the Covenant, to transform the de facto abolition of the death penalty in Hong Kong to a de jure abolition before 1997.

38. Mr. HALLIDAY (United Kingdom) said that with respect to the questions concerning Northern Ireland, it was important to avoid treating every allegation as an established fact. There was not and never had been a policy of shooting to kill on the part of the security forces in Northern Ireland, other than the policy which he had described in his opening statement, which was designed to ensure that officials responsible for maintaining law and order were protected by the law. The Committee members' concerns, rather, had focused on individual incidents in which deaths had been caused by members of the security forces. In reply to Mr. Lallah, he noted that 10 such deaths had occurred in 1990, four in 1989, six in 1988, nine in 1987, six in 1986 and five in 1985; he had no information on whether the victims had been armed. The essential question raised by such incidents was whether unlawful action had been taken in any particular case. Each incident had been fully investigated; in cases involving the Royal Ulster Constabulary, the independent Commission for Police Complaints for Northern Ireland had supervised the investigations. In addition, the evidence obtained had been weighed by the Director of Public Prosecutions, an independent official who could order further inquiries if he was not satisfied with the initial investigation. That procedure had resulted in the institution of criminal proceedings against members of the security forces; the question of guilt or innocence was a matter for the courts to decide according to the normal rules of judicial procedure. As Mr. Wako had noted, disciplinary action could also be taken against members of the armed forces regardless of the outcome of criminal proceedings. All available evidence showed that the security forces had received thorough training on how to react under difficult circumstances. His Government believed that its laws and practices were entirely consistent with its obligations under the Covenant.

39. In reply to Mr. Lallah, he noted that procedures for inquests were different from those for criminal proceedings because inquests were conducted for a different purpose; issues involving witnesses and verdicts were still under scrutiny at that stage. With respect to detentions under immigration powers, only a small proportion (up to 200 at any given time) of the approximately 20,000 persons who were refused entry into the country each year, were detained. Such persons were not normally held in prisons, but in special, less stressful facilities. The unfortunate incidents cited by Mr. Lallah had occurred in such facilities, but steps had been taken to prevent their recurrence: (1) whenever possible, people

(Mr. Halliday, United Kingdom)

were granted temporary admission instead of being detained; (2) conditions in special detention facilities were kept as congenial as possible; (3) such facilities were thoroughly inspected; and (4) a board of visitors had been established at the facility referred to by Mr. Lallah to hear complaints and, if necessary, to report them directly to the Home Secretary. As noted in paragraph 36 of the supplementary report (CCPR/C/58/Add.12), a new procedure for prisoner complaints had been instituted, and the Government was currently considering the report of Lord Justice Woolf which contained important recommendations on the role of governors and boards of visitors.

40. Mr. STOCK (United Kingdom) said that with respect to Mr. Wennergren's inquiry, he had no information on the number of death sentences imposed in Hong Kong over the previous decade. However, in the period between November 1966 (when the last death sentence had been carried out) and February 1991, the death sentences of 243 persons convicted of murder had been commuted, 53 per cent to life imprisonment and 28 per cent to determinate prison sentences of 20 years or more; he had no details on the remaining commutations. Recently there had been renewed calls for the reintroduction of the death penalty in Hong Kong because of widespread concern over the increase in violent crime. Although the British Parliament was in favour of abolishing the death penalty in Hong Kong, most people in Hong Kong wished to retain it as a deterrent to serious crime, so the Hong Kong Administration did not foresee any change in the policy in the immediate future.

41. In reply to Mr. Wennergren's question concerning the crime victimization survey conducted in Hong Kong (CCPR/C/58/Add.11, paragraph 31), he said that projections based on the survey results indicated that 46 per cent of Hong Kong's adult population felt that the most appropriate treatment of persons sentenced to death was to commute their sentences to life imprisonment, 28 per cent thought such persons should be executed, 21 per cent had no opinion and 3 per cent thought that the death sentences should be commuted to determinate terms of imprisonment. The survey had been confined to persons aged 18 and over. With respect to concerns about the retention of the death penalty in view of the transfer of sovereignty in 1997, the Sino-British Joint Declaration provided that the Hong Kong Special Administrative Region would enjoy a high degree of autonomy and would be vested with executive, legislative and independent judicial power, including that of final adjudication. The laws currently in force in Hong Kong, as well as the judicial system, would remain basically unchanged, so the death penalty would not become applicable to a broader range of crimes unless the Hong Kong Administration decided otherwise. He would, however, convey the Committee's concerns to the Hong Kong Administration.

42. Mr. BEAMISH (United Kingdom) said that his Government had become concerned about the discrepancy between its practice and that of the dependent territories in the Caribbean with respect to the death penalty. Although public opinion in the Caribbean territories tended to favour retention of the death penalty, consultations had been held between those territories and the British Government following the recent reaffirmation by the House of Commons of its support for the abolition of the death penalty. On 28 March 1991, the Secretary of State for

(Mr. Beamish, United Kingdom)

Foreign and Commonwealth Affairs had announced that an Order in Council would be moved to substitute life imprisonment for the death penalty in murder cases in the Cayman Islands, the British Virgin Islands, the Turks and Caicos Islands, Montserrat and Anguilla, and had expressed the hope that Bermuda would follow that example. A referendum conducted in Bermuda in August 1990, in which only 33 per cent of those entitled to participate had done so, had shown that approximately 8,500 persons favoured retention of the death penalty and 2,250 favoured abolition. Although the death penalty would not be abolished in Bermuda in the immediate future, the issue would not be ignored.

43. Mr. MYULLERSON said that he agreed with the views expressed by other Committee members on the death penalty in Hong Kong. It was not for public opinion to decide whether to retain or abolish the death penalty, since even in developed countries, public opinion generally tended to favour its retention. Such matters should be decided by specialists. Although he agreed that many societies were not ready to abolish the death penalty completely, studies conducted in the United Kingdom itself had shown no correlation between crime rates and the applicability of the death penalty.

44. Mr. STOCK (United Kingdom) said that although the survey referred to in the report had been a factor in the Hong Kong Administration's decision to retain the death penalty, he was sure that the Administration had not based its decision on the survey alone. He would, however, take note of the Committee's views on the subject.

45. Mr. WENNERGREN said that it was unclear what means were used to establish that the people of Hong Kong were in favour of the death penalty.

46. Mr. STOCK (United Kingdom) said that, while he had no specific information on that issue, he was aware of the fact that the authorities had taken regular soundings of public opinion over the years, and that they were also able to gauge public sentiment through local bodies.

Prohibition of torture and cruel, inhuman or degrading treatment or punishment (article 7 of the Covenant) (section VI of the list of issues)

Liberty and security of the person (article 9 of the Covenant) (section VII of the list of issues)

Treatment of prisoners and other detainees (article 10 of the Covenant) (section VIII of the list of issues)

47. The CHAIRMAN said that sections VI, VII and VIII were interrelated and would accordingly be considered together. He read out section VI of the list of isssues concerning the third periodic report of the United Kingdom, namely: (a) whether there had been any allegations that criminal convictions had been handed down on the basis of confessions obtained under duress and what possible remedies were available; and (b) whether regulations had been adopted to abolish corporal punishment in all schools.

(The Chairman)

48. He then read out section VII of the list of issues, namely: (a) the apparent discrepancy between the indication in paragraph 108 (d) of the report that a detainee must be brought before a magistrate's court and charged within 96 hours of his arrest and the statement in paragraph 109 (e) of the report that detention periods were subject to the sanction of the court after 36 hours; (b) whether legislation similar to the Police and Criminal Evidence Act 1984 had come into operation in Northern Ireland; (c) whether ex gratia payments to persons who had been detained in custody resulted from an enforceable right to compensation in the sense of article 9 (5), of the Covenant; and (d) whether suspects systematically underwent a medical examination or could themselves request such examinations.

49. Finally, he read out section VIII of the list of issues, namely: (a) whether the planned review of prison rules and standing orders in Northern Ireland had been completed and, if so, whether any of the changes adopted in the rest of the United Kingdom had been incorporated in such rules; (b) information concerning proposals for further legislation that might have been made since the submission of the report regarding resort to community-based measures in lieu of prison terms for young adult offenders as well as for improving the operation of the parole system; (c) whether offenders in Northern Ireland other than those accused of terrorist-type offences were eligible for parole and, if not, why they were denied benefits available in other parts of the United Kingdom; (d) information on the provision and use of secure accommodation for children and on the number of children in such accommodations and the relative proportions of convicted youngsters and others in the various secure units; and (e) whether there had been any studies regarding the extent to which the prison system guaranteed the realization of the aim of reformation and social rehabilitation stipulated in article 10 (3), of the Covenant.

50. Mr. HALLIDAY (United Kingdom), referring to section VI (a), said that, while allegations of serious ill-treatment aimed at obtaining confessions had occasionally been made, they had been very rare in recent years. If the allegation was made in the course of a criminal trial, the matter was decided during the trial itself, and if upheld, such statements were not admitted as evidence. They could also be reviewed on appeal, but even after the failure of an appeal remedies were available through civil proceedings or complaint procedures. In addition, the Home Secretary could refer a case back to the Court of Appeal for reappraisal. A wide-ranging programme of measures to prevent ill-treatment of suspects had been introduced in recent years, mostly under the Police and Criminal Evidence Act; safeguards detailed in the report included the tape-recording of interviews, which was soon to be mandatory, and the assignment of custody officers to supervise the questioning of suspects. Some specific cases of impropriety, and indeed falsification, of statements had been referred back to the Court of Appeal, and the convictions thus obtained had been quashed. In order to ensure the quality of evidence the Government had set up a Royal Commission on criminal justice to supplement the provisions of the Police and Criminal Evidence Act and to reduce the likelihood that evidence would not be sufficiently scrutinized.

(Mr. Halliday, United Kingdom)

51. Referring to section VI (b), he said that corporal punishment had been abolished for all publicly-funded schools and publicly-funded pupils in independent schools. For privately-funded pupils at independent schools the Government took the view that sanctions in criminal and civil law were sufficient, and that within the law there was room for parental choice. Corporal punishment had also been abolished in local authority homes.

52. Turning to section VII (a), he said that 96 hours was the maximum period for which a person could be detained in connection with a serious arrestable offence without charge, even with the authority of a magistrate's court. The maximum period for which a person could be detained without charge for such an offence on the authority of a police officer (of at least the rank of superintendent) was 36 hours, while the maximum for an offence which was not a serious arrestable offence was 24 hours. In that connection, the words "a further" in the second sentence of paragraph 108 (d) of the United Kingdom's third periodic report (CCPR/C/58/Add.6) were misleading and should not have appeared.

53. Referring to the question in section VII (b), he said that the Northern Ireland Police and Criminal Evidence Order did not deal with police complaints, but that appropriate provisions were contained in the Police (Northern Ireland) Order 1987. However, some provisions of the Police and Criminal Evidence Order did not apply to persons detained under the terrorism provisions. The Northern Ireland Police and Criminal Evidence Order also took account of separate provisions made for terrorist cases in the emergency provisions legislation.

54. With regard to section VII (c), he said that there was no provision in United Kingdom law for an enforceable right to compensation in respect of arrest or detention which was lawful under United Kingdom law but which was inconsistent with article 9 of the Covenant. A requirement that there should be such an enforceable right in domestic law would mean that the State had either to incorporate the Covenant (or that part of article 9) as part of its domestic law, or make equivalent provision in its domestic law. That would appear to go much further than a State's obligations in relation to the Covenant and, in particular, article 2 (2), which allowed a State to choose between legislative and other measures to give effect to the rights recognized in the Covenant.

55. Concerning the medical examinations referred to in section VII (d), he said that safeguards were contained in the Codes of Practice. A custody officer had a duty to call a police surgeon immediately if he saw a need to do so, and did not have to wait for a request. At the same time, any request must be acted on as soon as practicable, except in Northern Ireland terrorist cases, where the custody officer had some discretionary authority. If the case involved a possible assault, a police surgeon must be called.

56. Turning to section VIII (a), he said that the review of prison rules and standing orders in Northern Ireland was currently in progress, and would be the subject of a statutory order.

(Mr. Halliday, United Kingdom)

57. In connection with section VIII (b), he said that the Criminal Justice Bill currently before Parliament contained a major programme of reform, and provided a new framework for sentencing in England and Wales based on the seriousness of the offence. Longer sentences were envisaged for violent and sexual crimes, and greater scope given to punishment in the community through a combination of probation, community service and curfew orders. In future, fines would be more closely based on the ability to pay and more strictly enforced. The proposed legislation was accompanied by programmes aimed at preventing the unnecessary use of remand in custody through the funding of young adult offender schemes and the expansion of hostel accommodation. The Criminal Justice Bill also incorporated a major reform of the parole system, providing for supervision in every case after a prisoner was released. The probation service would be expanded, focusing more closely on more serious offenders with the aim of enabling them to dissociate themselves from criminal activity.

58. Referring to section VIII (c), he said that, as paragraph 134 of the report (CCPR/C/58/Add.6) made clear, it was extremely difficult to operate an effective parole system when a high proportion of offenders had committed terrorist crimes. Further details regarding remission were given in paragraph 170 of the report.

59. In connection with section VIII (d), he said that secure accommodation for children was provided in a variety of ways. As of 31 March 1989, local authorities provided 288 approved places in 35 secure units in England and Wales: of the 224 juveniles occupying places in those units, 60 per cent had either been convicted or were on remand. However, the criterion for placement was not the commission of a criminal offence but the need to protect the child from injuring himself/herself or others. Mention should also be made of two special secure youth treatment centres, with some 70 places and a very highly qualified staff. As of 31 December 1990, 41 of those places were occupied by children convicted and sentenced for serious offences. In prison establishments as of 30 June 1990 there were 275 sentenced juveniles and 111 juveniles on remand: legislative measures had successively reduced those numbers over the years, and the juveniles were kept apart from adult offenders as much as possible. It should be pointed out that secure accommodation was only to be used when the statutory criteria were met, and efforts were made to ensure that the juvenile could be sent back to non-secure accommodations at the earliest opportunity.

60. Turning in conclusion to section VIII (e), he said the Government was funding a continuing research programme on reform and rehabilitation. As in other countries, research in the United Kingdom had been influenced by negative reports on the effectiveness of intervention, but some studies had shown that intervention could work on occasion, if properly targeted and managed. It was recognized that earlier approaches had been too general and too indiscriminate, and that programmes must be tailored to the needs of specific groups. Accordingly, projects had been evolved for monitoring intensive probation, the aim being to confront the underlying causes of serious offences. However, the effectiveness of such programmes could not be measured merely by reconviction rate. Attention was also being paid to the problem of sexual offenders and the need for continuity between prison and after-care.

61. Mr. LALLAH, referring to section VI (b), said that he could not see the logic of invoking the sanctions of criminal and civil law in respect of corporal punishment of privately-funded pupils in independent schools and asked whether the same standards should not apply to all pupils in all schools.

62. With further reference to section VI, he wondered why prosecutions for torture required the approval of the Attorney-General if there was an independent Director of Public Prosecution.

63. The CHAIRMAN said that members would submit further questions on the third periodic report of the United Kingdom at the Committee's next meeting.

The meeting rose at 6.05 p.m.